

MINUTES

STATE OF WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

February 10, 2003 - Regular Meeting¹

4224 6th Avenue S.E., Building 1

Lacey, Washington, 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The regular meeting of the Washington State Energy Facility Site Evaluation Council for Monday, February 10, 2003, will come to order.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Department of Ecology

Department of Fish & Wildlife

Department of Natural Resources

Utilities and Transportation Commission

Chair

Dick Fryhling

Chuck Carelli

Jenene Fenton

Tony Ifie

Tim Sweeney

Jim Luce

MR. MILLS: I note the presence of Chair Jim Luce and there is a quorum.

OTHERS IN ATTENDANCE

EFSEC Staff and Counsel

Allen Fiksdal

Mike Mills

Michelle Elling

Irina Makarow

Mariah Laamb

Pete Dewell – ALJ (via phone)

EFSEC Guests

Ronald Lavigne, AGO

Alan Harger, DOT

Mike Lufkin, CFE

Mark Anderson, CTED

Lauri Vigue, WDFW

Mike Dunning, AGO

Darrel Peeples, Wallula

Mike Elmer, Starbuck

Cindy Custer, BPA

¹ The minutes are in transcript style and have had minor editing for clarity purposes.

ITEM NO. 3: APPROVAL OF MINUTES

CHAIR LUCE: Council Members, have you had the opportunity to review the minutes of January 13?

COUNCIL MEMBERS: Yes.

CHAIR LUCE: Do I have a motion to adopt the minutes of January 13?

MR. CARELLI: So moved.

CHAIR LUCE: Do I have a second?

MR. IFIE: Second.

CHAIR LUCE: All in favor say Aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: The minutes for January 13, 2003 are adopted.

ITEM NO. 4: ADOPTION OF PROPOSED AGENDA

CHAIR LUCE: We have before us the adoption of the proposed agenda. Are there any proposed changes or additions to the agenda as laid before you?

MR. FIKSDAL: Mr. Chair, the only change is Andy McNeil for Duke Energy will not be here, and I will make the report instead.

CHAIR LUCE: Thank you. Are there any other proposed additions or changes? Hearing none, the proposed agenda is adopted.

ITEM NO. 5: KITTITAS VALLEY WIND POWER PROJECT

<i>Progress Report</i>	<i>Irina Makarow, EFSEC</i>
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CHAIR LUCE: First on the agenda is the Kittitas Valley Wind Project. Ms. Makarow, do you have a report for the Council? May I ask who is on the phone?

MR. DEWELL: Pete Dewell.

CHAIR LUCE: Pete, welcome. Irina.

MS. MAKAROW: A very short progress report. At the end of January we executed a task order with Shapiro, so they have begun reviewing the application and are starting to work on the EIS. The application review report will be delivered to the Council just after the public meeting that is being scheduled for March 12th. We are finalizing the arrangements for the March 12th meeting. We will be getting notices out to the public this week. Last Thursday, Chair Luce and Council Member Fryhling, myself, Ann Essko, and Allen Fiksdal visited the County commissioners in Ellensburg, and Allen gave an excellent presentation about the EFSEC process. We had some very good questions and some highly voiced opinions that the Council should hold their meetings in Kittitas County as much as they could with regards to this project.

CHAIR LUCE: I think it's fair to say for the record that we stated we would to the maximum extent possible hold our meetings in Ellensburg and in Kittitas County, and I've conferred with other members of the Council, and they feel similar on it. Anything else to report with respect to that project?

MS. MAKAROW: Just a reminder that if you are not planning to take the Washington State Patrol plane, that you quickly let Mariah know because that may impact our travel plans.

CHAIR LUCE: Thank you.

ITEM NO. 6: BP CHERRY POINT PROJECT

<i>Progress Report</i>	<i>Michelle Elling, EFSEC</i>
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CHAIR LUCE: The next item on the agenda is the report on the BP Cherry Point Project. Ms. Elling.

MS. ELLING: EFSEC staff met with Mike Torpey and our independent consultants Shapiro last week to get an update on the progress BP is making in the revisions to the application for site certification to incorporate the changes from air cooling to water cooling and the addition of emergency diesel fired equipment. BP is planning to submit a complete revision package to the application, which would be a red-line strike out version. It will include all of the changes, including the cultural resources and the wetland mitigation. BP expects to submit the revision by the end of this month.

CHAIR LUCE: Thank you. If we receive it by the end of this month, do we have a tentative time line, Allen or Michelle?

MR. FIKSDAL: I think the more probable question is if we receive it at the end of this month.

CHAIR LUCE: All right. Thank you.

MS. ELLING: And then it would depend on the extent of the magnitude and scope of the change. That will impact how long it takes Shapiro to produce an administrative Draft EIS.

MR. FIKSDAL: And review all the information. Shapiro has to review the new information, look at it, and then process it.

CHAIR LUCE: Understood. Thank you, Michelle. Ms. Fenton, you have a question.

MS. FENTON: Actually I have a couple. At the last meeting when BP was here and indicated that they were going to be amending their application, I asked that they have some kind of letter indicating that they were the reason for the delay and that EFSEC was not slow in processing their application, and they indicated they would be sending in some kind of letter to that effect.

MS. ELLING: I will remind Mr. Torpey to submit that at the same time he gives us the revision package.

MS. FENTON: The other question I have is, whatever happened with the Corps' review of the wetlands? Last time I think we talked about wetlands the Corps was still in the process of reviewing and had questions and kind of threw the gauntlet down, if I remember correctly, as far as whether or not they would approve whatever it was that was being proposed.

MS. ELLING: BP went ahead and submitted a revised wetlands mitigation plan in December. The Corps has reviewed that submission. They issued a letter at the end of January stating that it was not sufficient. They have given the project another 60 days to address their comments. BP intends to address those comments, and that will be part of this complete revision package we are awaiting.

CHAIR LUCE: So it's fair to say they're having ongoing discussions with the Corps.

MS. ELLING: Yes.

MR. FIKSDAL: The Corps in their letter to BP was pretty adamant in explaining that they haven't met the Corps' expectation in some of the material that had been submitted, and they basically said if the company didn't submit that information within 60 days, that they would consider the permit application expired.

MS. FENTON: So is this the second letter that the Corps has sent out?

MR. FIKSDAL: Yes. And we got the sense from BP that they wanted to get the Corps the information. I think they're having some problems with their consultant more than anything.

MR. CARELLI: Michelle, you indicated the changes had to do with air to water cooling and did you say diesel firing?

MS. ELLING: Yes.

MS. MAKAROW: They want to install an emergency backup diesel generator and a diesel fire pump.

MR. CARELLI: Thank you.

CHAIR LUCE: Any other questions from the Council? Hearing none, thank you very much Michelle.

ITEM NO. 7: SATSOP COMBUSTION TURBINE PROJECT

<i>Phase I Status</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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CHAIR LUCE: Satsop Combustion Turbine Project. Do you have a report for us, Allen?

MR. FIKSDAL: Yes. Andy McNeil couldn't make it today. I want to direct you to a letter that is in your packet, dated January 31, 2003, entitled, Satsop Combustion Turbine Project Prevention of Significant Deterioration Permit. If you turn to Page 2, the first paragraph, Duke Energy states that as of January 21, 2003, their level of construction has fallen below the minimum level for the purposes of the PSD permit. As you probably remember under the PSD, the company can't have more than 18 months of non-minimal construction before the PSD would be invalid. We've asked them to alert us of this condition, and they have done so by submitting this letter.

We've also had ongoing discussions with Duke Energy over the NPDES permit and issues related to the NPDES permit. They have hired URS to look at the whole storm water system, the NPDES issues, and are going to come back to the Council with a more comprehensive plan and procedural development of what they are going to do. There has been evidently a piecemeal approach, and now through URS, they want to get a more comprehensive overall picture. We sent Duke a letter asking them to submit some information by the end of today. They have sent a letter and asked us to extend that time period. We said that's fine, particularly in the case that they're going to have to do a more comprehensive review, and we expect that to be submitted to us by the end of the month.

CHAIR LUCE: Great. Questions from Council members?

ITEM NO. 8: CHEHALIS GENERATION FACILITY

<i>Construction Progress Report</i>	<i>Mike Mills, EFSEC</i>
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CHAIR LUCE: All right. We'll move ahead with respect to Chehalis Generation Facility. Mr. Schneider.

MR. MILLS: Tom Schneider is not here. I'll make the progress report. I spoke with Tom this morning, and the Chehalis Generation Facility is proceeding with construction. He indicated construction is about 76 percent complete. The focus is on piping and electrical, and all major equipment and components are in place. Overall the project is about 93 percent done.

They're targeting right now July 30th as an acceptance or a completion of construction, reminding the Council that the actual date that is on the books is November 1st for commercial operation. They still feel that they can beat that working with their contractor, TIC, to do that. Tom noted that they have reached one million man-hours work effort, and that's a bench mark in the industry, and their safety record continues to be quite good in terms of industry. They're remaining at under two as opposed to a six average in terms of accident reporting. They've got about 15 systems, total systems turned over to the TIC start-up test unit out of about a total of 100. So, again, the plant is continuing to be constructed ahead of schedule, and we will continue to monitor that activity for the Council.

CHAIR LUCE: Thank you. Questions from the Council? Mike, I note the presence of an action item with respect to water use mitigation. Would that be the acceptance of the water right?

<i>Water Use Mitigation</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: Chehalis Power has asked me to request the Council to defer this matter until the March Council meeting. You'll recall that the Council had earlier approved a water acquisition of about 50 acre feet referred to as the Reisinger right. They've gone ahead and submitted that to the Department of Ecology, and apparently there was a question or issue that came up. They're looking at transferring into a trust program, so they're going to let Ecology proceed with that review. And in the meantime they indicated that if there's an issue or problem with that right being transferred, they would come to the Council in March and ask for approval of the entire 106 acre feet from the Hamilton right. They were going to ask for 50 today, but they apparently in discussion with Hamilton that was 400 total right of acre feet, and they feel that they can get the 106 out of the total. So we'll wait and see what Ecology says. The company won't have to resubmit the report, so I think what I will report to the executive committee is I'll bring a revised resolution. I think that would be before you next month then.

CHAIR LUCE: Great. Thank you. Any questions from Council members?

ITEM NO. 9: WALLULA POWER PROJECT

<i>Status Report</i>	<i>Irina Makarow, EFSEC</i>
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CHAIR LUCE: The next item on the agenda is the Wallula Power Project. Ms. Makarow, do you have a status report for us on that?

MS. MAKAROW: Yes. In your packets you will find a cover letter that we received from EPA Region 10, which accompanied a proposed signed PSD permit. Staff issued that PSD permit officially last week which meant sending out copies to the people who had commented and having copies at the reference locations as required by state and federal law. The other item that I'll report on is Wallula Power's request for Council action on some changes in their ownership. Staff is still working on the process with respect to that action and probably at the next Council executive committee meeting we'll have a process outlined for you.

CHAIR LUCE: Thank you. Questions from Council Members? Comments from the public? Hearing none, we'll move ahead to the next item, which is Starbuck Power Project.

ITEM NO. 10: STARBUCK POWER PROJECT

<i>Application Extension Request</i>	<i>Irina Makarow, EFSEC</i>
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CHAIR LUCE: There's been an application extension request. Ms. Makarow.

MS. MAKAROW: Yes. Shortly after last month's Council meeting we received a letter from Mr. Mike Elmer representing Starbuck Power in which the Applicant requested another six-month extension of the Council's suspension of the review of the Starbuck Power Project. Mike is here today, and I'd invite him to come and give us an update on the project.

MR. ELMER: Good afternoon. We are continuing to maintain the options of the property purchase option. We have an option to purchase an existing water right, and actually Ecology gave us a five-year extension on our water right permits. So we are maintaining the things that we need to maintain. We continue to communicate with Columbia County commissioners. We are actually having a meeting today with a potential owner/operator, so our hope is to restart the process as soon as possible.

CHAIR LUCE: Mr. Elmer, correct me if I'm wrong. Is this the second request for an extension?

MR. ELMER: Yes, it is.

CHAIR LUCE: Questions from Council Members?

MS. FENTON: The PSD permit, where does that fit into this thing or does it?

MS. MAKAROW: It was under review at the time that they stopped work, so a draft hasn't been issued yet.

MS. FENTON: So there's no time frame associated with that or is there?

MS. MAKAROW: There could be changes involved with that. If BACT requirements have changed, for example, over the past year, and lower emission levels for BACT would be required, then something could have changed there. So at the moment that the Applicant comes to us and says they want us to restart the project, our air permit contractor would look at that and determine if that is the case or not.

MR. FIKSDAL: Also, in any air review you want to look and see if there's any new sources that would have come into the air shed, and put that in too. Maybe it would have to be remodeled.

CHAIR LUCE: What would the process be with respect to SEPA?

MS. MAKAROW: In the SEPA process we were at the stage where we were probably 85 to 90 percent of completion of the Draft Environmental Impact Statement. There were still some outlying information needs that we had stopped working on, so there would be probably a three-to four-week period to get back into that route and have the Draft EIS ready for issuance. It hadn't gone actually through any internal BPA review yet, so they were still actually working on the administrative draft document.

MR. FIKSDAL: The only thing I don't know is if there's some time element that's involved in re-scoping or looking at whether there's any new information that needs to be looked at or if anything has changed out there. I think that's the concern that staff has is that in extending this or the suspension is what Starbuck is asking for, how long is long enough? I don't think we've looked at that. How long can this process go on? We don't know. I assume given that part of the world that not a whole lot of change happens over a relatively short period of time, but at some time we would need to look and see if there are any changes to the environment or something that needs to be re-categorized or any changes to information and impact from that

project. So I guess it would be staff's recommendation that you extend this or grant this request for another six months, but I think that the Council needs to look at how long this might go on.

CHAIR LUCE: Are there any particular rules governing an extension of such proceedings?

MR. FIKSDAL: No, I don't think. The Council doesn't have a rule specifically addressing this type of extension.

CHAIR LUCE: So it's a discretionary item.

MR. FIKSDAL: Yes.

CHAIR LUCE: Do I have a request to make a motion? Irina.

MS. MAKAROW: Before Council does act on any motions, Ron Lavigne - Counsel for the Environment, has asked to address the Council on this issue.

CHAIR LUCE: Mr. Lavigne.

MR. LAVIGNE: Thank you, Chairman Luce and Members of the Council. Counsel for the Environment's Mike Dunning and I are still co-counsel for the environment on this case, and we wanted to come today and voice our objection to an additional extension of this application. And we have some concerns on both legal and policy grounds.

On the legal ground as the exchange between Mr. Luce and Mr. Fiksdal just brought to light, there really is no statutory or regulatory authority to suspend these considerations at all. I guess theoretically an argument could be made that EFSEC could adopt regulations and fill in the gaps the legislature left to authorize this type of progress, but the fact is the Council has not done that, so there's nothing in either your enabling statute or in the regulations that you yourself have adopted that even authorize this process and so we question.

It's come up from time to time. The Council has used this process rather judiciously in the past, and it's never been challenged. But I think the first concern and issue I have is, is legally is this something that you're even authorized to do? Secondly, we have a number of concerns on policy grounds, and I think it's sort of a bulk policy and fairness issue.

As many of you know, Mike Dunning and I were Counsel for the Environment on the Wallula Project. We had a discussion with the Council about how that project would be scheduled for adjudicative hearings. And you will recall that Mike and I were urging a somewhat slower process than the Applicant and EFSEC ultimately adopted. And at the time the Council pointed to its statute, in particular RCW 80.50.100, which says that you're suppose to make a recommendation to the Governor within 12 months of receiving the application, and that was cited to us repeatedly as the reason for why we needed to get on to what we felt was a very overly aggressive schedule.

The application that you're considering extending today was filed in August of 2001. If you grant an additional six-month extension, the Council won't even decide how to start scheduling consideration of that until 24 months after the application has been submitted, so we feel there should be some fairness here. It shouldn't be a situation, where when the Applicant comes in and says go fast, you go fast, and when the Applicant comes in and says go slow, you go slow. All the parties in front of EFSEC have a right to be treated equitably. And if you're going to impose a 12-month time line in one project, you should try to stick to that in other projects.

The other concern we have is that it doesn't seem to be very necessary, and in fact might place an unfair burden on the public and potential intervenors if this project were ultimately to go forward. The material in that application will be over two years old if you grant this extension. Some of that is undoubtedly going to be stale. At a minimum someone is going to need to look through the application and decide what may need to be supplemented or an addendum, and then you'll have a process where you've got a dated potential site study, dated original application,

two volumes of original dated application, plus some sort of addendum that the public and intervenors would need to wade through to understand the project. It seems to be a much fairer approach since that addendum is going to have to be looked at anyway to not grant the extension. If the company decides to move forward with the project, then have them resubmit a new application. They would certainly be free to look at their existing materials and use whatever might still be relevant, but the public and other intervenors won't have the challenge of having to wade through dated documents and addenda to try to figure out the project. That burden should fairly be placed on the company that came to this Council and filed an application that they're now telling you that they're not prepared to move forward on. So for those reasons we think that the Council should deny this request for what is really a pretty lengthy and unprecedented extension.

If you are inclined to move forward on it, we think at a minimum the company should be required to make a showing as to why this extension is necessary, how long it might ultimately need to be for, what the forecast is for ultimately moving forward with the project. And until the Council gets that information, we feel there is probably insufficient information to make a decision to move forward with the extension.

Finally, if the Council does decide to make an extension, we think it should be clear that this is the last extension that would be given before a new application were required. So in sum, we for the reasons I've stated, think the Council should not grant this extension for both legal and equitable reasons. I would ask that you take that action at this meeting. Thank you.

CHAIR LUCE: Thank you. Any questions of the Counsel for the Environment? No questions. Thank you.

MR. LAVIGNE: Thank you, Chair.

MR. ELMER: I would just like to point out that there's been a great deal of work that's gone into this project, and I feel that the project isn't going to change. I mean it's very well thought out environmentally. We felt we were on solid ground. And since all this work has been done, it just seems to us that another six months is not unreasonable.

CHAIR LUCE: Mr. Carelli.

MR. CARELLI: Counsel for the Environment raised kind of I guess a quasi or a legal question whether we can actually do that. Allen likewise was uncertain what limitations we might have with respect to the State Environmental Policy Act, and I guess I would like to see staff and our AG take a look at this subject and give us some suggestions or advice as to what our actual legal ground is and whether we can or cannot do something like that. And sorry, Ron, but my suggestion would be to if we're going look at an extension to do a two-year extension and make that the final extension.

CHAIR LUCE: I have a question for you, Allen. Is this necessary for us to take action at today's meeting on the six-month? Didn't we initially grant the six-month extension, and that time is coming due, and then we have to take action? Where are we in the process?

MR. FIKSDAL: You've already granted two six-month extensions.

CHAIR LUCE: All right.

MS. MAKAROW: I believe the time coming due would actually be in March.

MR. FIKSDAL: That was actually my question to you is if you are going to take some time to look at this issue, does that or would you want to I guess extend the last extension until such time as you make a decision on this one?

CHAIR LUCE: Well, the sense of the Council. I mean I've read Statute 100 and looked at our discretionary authority and I'm not practicing law anymore, but I always tend to resolve legal

issues when there's a discretionary function aspect of that from the Council's perspective, so I'm not troubled by the legal issues. But if the Council wants to have the AG look at it, then that would be fine with me too. What I don't want to do is not take any action and then have the six months lapse, and then by default the Applicant no longer has a viable application before the Council.

MS. FENTON: I would like to have our attorney look at the question.

CHAIR LUCE: That's fine.

MS. FENTON: But in fairness to everybody I think it should be tied to when we make a final decision then the authority lapses.

CHAIR LUCE: So do I hear a motion to extend the Starbuck Power Project application until such time as the Assistant Attorney General has had a chance to examine the statutory issues raised by Counsel for the Environment and reported her findings to us?

MS. FENTON: So moved.

CHAIR LUCE: Do we have a second?

MR. FIKSDAL: Before you second, I think you should modify it. You should do it not until the AG but until you take further action.

CHAIR LUCE: Until such time as the Council takes further action upon the recommendation and advice of the Assistant Attorney General. So modified?

MS. FENTON: So modified.

CHAIR LUCE: So seconded?

MR. CARELLI: Second.

CHAIR LUCE: So approved? All in favor say Aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: Thank you very much.

MR. ELMER: So what time frame are we looking at this?

CHAIR LUCE: We did not denominate a specific time frame. We denominated a time as soon as we receive legal advice from our Assistant Attorney General with respect to our authority to extend the power project application after such time as she's had an opportunity to consider the legal arguments of Counsel for the Environment.

MR. FIKSDAL: I would expect the Council at their March meeting would probably know that and be able to take some action.

MR. ELMER: That's what I was wondering. Thanks.

CHAIR LUCE: As soon as possible. Thank you. A good healthy discussion.

ITEM NO. 11: EFSEC RULES

<i>Mediation</i>	<i>Jim Luce, EFSEC Chair</i>
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CHAIR LUCE: EFSEC rules topic discussion. Well, we had a substantial discussion regarding the draft mediation rule, and the question today before the Council is are we at such a point in that discussion as to feel comfortable putting it onto the EFSEC website as a draft?

MS. FENTON: Yes.

CHAIR LUCE: Ms. Makarow, would you please put that onto the EFSEC website? And, keeper of the rules discussion, what do we have lined up for the executive committee meeting?

MS. FENTON: For the executive committee next week we've got environmental benefits, fish and wildlife, water resources, water quality, social and economic to look at. And, Dick, you

have one too, certificate of expiration. Those will be the initial discussions for some, and the Chair has requested that any decisions as far as moving forward to the full Council be delayed until March 3.

CHAIR LUCE: Is it possible to see the environmental benefit rule?

MS. FENTON: You want to see it?

CHAIR LUCE: I would like to see it.

MS. FENTON: Okay.

CHAIR LUCE: Mr. Sweeney and I are working diligently on preparing our CO2 rule and the need for power rule. Actually it may not be a need for power rule but a recommendation with respect to the issue of need for power, and we'll have that on March 17th.

MR. SWEENEY: We promised that, yes.

CHAIR LUCE: We promised that. Whether we will deliver that we will be accountable for delivery or not delivery in any case.

ITEM NO. 12: OTHER

CHAIR LUCE: WNP 1 and 4 is still in a holding pattern but with some expectation that the agreement may be signed by the Governor's office by the end of this month. Do you have a report on the McWhorter Ranch?

MS. FENTON: I didn't think we had a specific property rule.

CHAIR LUCE: We don't. Do you have a report on the property?

MS. FENTON: The same as last time.

CHAIR LUCE: Is there anything else for the good of the Council today? Mr. Mills.

MR. MILLS: Just to remind the Council that prior to the next executive committee meeting on Tuesday, February 18th, there will be a special Council meeting. The action item will be to consider Energy Northwest's proposal to construct and operate a hydrogen storage facility, and that meeting will begin at 1:30, with the executive committee meeting to follow.

CHAIR LUCE: Do you have a quorum for that or do you want me to call in?

MR. MILLS: I believe we have a quorum. I think we will be fine.

ITEM NO. 13: ADJOURN

CHAIR LUCE: Anything else to come before the Council? Any comments from the public? Hearing nothing, then the meeting is adjourned.

(Council Meeting is adjourned at 1:59 p.m.)

Shaun Linse, CCR